

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

WAL-MART PUERTO RICO, INC.

Plaintiff,

v.

JUAN C. ZARAGOZA-GOMEZ, in his official  
capacity as Secretary of the Treasury of the  
Commonwealth of Puerto Rico

Defendant.

Civil No. 3:15-CV-03018 (JAF)

**MEMORANDUM AND ORDER**

“[I]t is trite but often true that justice delayed is justice denied.” *In re Atl. Pipe Corp.*, 304 F.3d 135, 147 (1st Cir. 2002). As Chief Justice Roberts observed in his 2015 Year-End Report on the Federal Judiciary, Rule 1 of the Federal Rules of Civil Procedure now directs not only the court, but “‘*the parties* to secure the just, speedy, and inexpensive determination of every action and proceeding,’ . . . highlight[ing] the point that lawyers – though representing adverse parties – have an affirmative duty to work together, and with the court, to achieve prompt and efficient resolutions of disputes.” *Id.* at 6 (2015) (emphasis in original) (quoting Fed. R. Civ. P. 1). The court takes this mandate especially seriously here, out of an appreciation of the stakes for both parties.

From the start of this action, the court has engaged in rigorous and effective case management. The court has sought to provide the parties with the “speedy hearing” that the Federal Rules contemplate. *See* Fed. R. Civ. P. 57. In fact, the parties have regularly impressed on the court the need for, plus their support of, expedition. (See, e.g., ECF Nos. 1 ¶¶ 6-7, 66; 24 ¶ 2.42; 25 ¶ 1.4; 37 at 13, lines 8-19; 40 at 2; 48 at 13.) The court

1 understands that expedition requires hard work, but it requires hard work of us all. As the  
2 court purposefully advised the parties at the conference on December 23, 2015, “If you  
3 have any question, if there is any dispute, the doors of my chamber are open 24/7 to deal  
4 with this [case]. . . . Day or night. No matter what.” (ECF No. 37 at 53, lines 3-5, 8.)

5 The trial scheduled to begin on February 2, 2016, will combine the jurisdictional  
6 inquiry and the merits of the action because the court has found that the two issues are  
7 closely related, even intertwined. Whether the challenged tax is “exorbitant” and thus  
8 presents an exception to the Butler Act, for example, involves many of the same facts and  
9 considerations as whether the tax is “punitive” and thus constitutes a bill of attainder. Of  
10 course, the court may lack subject-matter jurisdiction of the action under the Butler Act,  
11 48 U.S.C. § 872. If Wal-Mart PR fails to prove that an exception under the Act obtains in  
12 this case, the court will promptly enter judgment for the Commonwealth and dismiss the  
13 complaint. But, the parties have nothing to gain from bifurcating the court’s  
14 consideration of the issues, thereby creating the possibility of an unnecessary and  
15 wasteful duplication of testimony, evidence, and argument.

16 Yesterday afternoon, the Commonwealth moved the court to stay discovery and to  
17 decide the issue of subject-matter jurisdiction on the briefs alone and without the benefit  
18 of fact-finding. (ECF No. 53.)

19 The Commonwealth argues that a stay is warranted because “more time” is needed  
20 “for an ordered and rational discovery process.” (ECF No. 53 at 2.) The Commonwealth  
21 also asserts that “the four corners of the complaint *in tandem* with the parties’ respective  
22 briefs amply suffice to evaluate the jurisdictional challenge.” (ECF No. 53 at 2.) Thus,

1 the Commonwealth is arguing for a stay because it allegedly needs more time to conduct  
2 discovery on Wal-Mart PR to justify the legality of the Tangible Property Component of  
3 its corporate Alternative Minimum Tax. That argument is unavailing.

4 Wal-Mart PR challenges the tax on its face as violative of the dormant Commerce  
5 Clause, the Equal Protection Clause, and the Bill of Attainder Clauses of the United  
6 States Constitution, and also the Federal Relations Act. (ECF No. 1 at 31-35.) In other  
7 words, Wal-Mart PR's claims and the relief that would follow – a declaratory judgment  
8 that the tax is unconstitutional and contrary to federal law, and an injunction against  
9 enforcement of the tax (see ECF No. 1 at 35) – reach beyond the particular circumstances  
10 of Wal-Mart PR and target the tax as a whole. The complaint could not be clearer on this  
11 point. The problem for the Commonwealth is that relevant defenses to such claims do  
12 not require or call for protracted factual discovery about Wal-Mart PR and its affiliates.

13 In the complaint, Wal-Mart PR alleges that the corporate Alternative Minimum  
14 Tax violates the dormant Commerce Clause because the tax, “by its very nature,  
15 discriminates against interstate commerce” and was enacted for that purpose. (ECF No. 1  
16 ¶ 70.) The tax allegedly violates the Federal Relations Act for the same reason. (ECF  
17 No. 1 ¶ 74.) The tax allegedly violates the Equal Protection Clause because it “expressly  
18 benefits entities that are engaged in a trade or business exclusively located in Puerto  
19 Rico,” while “discriminat[ing] against interstate corporations that are based outside of  
20 Puerto Rico,” treating “[s]imilar purchases” unequally in a prohibited manner. (ECF  
21 No. 1 ¶ 79.) And, the tax allegedly violates the Bill of Attainder Clauses because it  
22 “specified Wal-Mart as the sole taxpayer in the highest . . . bracket,” it “punishe[s] Wal-

1 Mart PR for the presumed offense of ‘tax evasion,’ as alleged . . . [in] letters to and  
2 testimony before the Legislature,” and it “eliminated the one procedure that previously  
3 existed for a taxpayer to seek a waiver from the Tangible Property Component.” (ECF  
4 No. 1 ¶ 83.)

5 The Commonwealth claims that it needs protracted discovery from Wal-Mart PR  
6 to defend against these charges, but the Commonwealth does not explain how internal  
7 financial data about Wal-Mart PR could alter the tax’s effects on interstate commerce,  
8 justify those effects as applied to every corporate taxpayer in Puerto Rico engaged in  
9 controlled transfers, or render the tax any less targeted or punitive against Wal-Mart PR.  
10 So far, the Commonwealth has largely been unsuccessful in identifying a relevant area of  
11 discovery pertaining to the merits of the complaint. In a recent discovery plan, for  
12 example, the Commonwealth’s requests focused on information directed at whether Wal-  
13 Mart PR has used transfer pricing to lower its Puerto Rico tax burden. (See ECF No. 48  
14 at 13-16.) Such an inquiry may be appropriate in a Commonwealth tax audit, but not in a  
15 federal-court challenge to the tax as illegal on its face (and, thus, as applied to every local  
16 corporation engaged in controlled transfers).

17 The court recognizes that the wrongful use of transfer pricing to evade local taxes  
18 is a legitimate governmental concern to which the Commonwealth may seek a legislative  
19 solution. The question here is whether the current solution, as enacted in the Tangible  
20 Property Component of the Commonwealth’s corporate Alternative Minimum Tax, is  
21 valid under federal law. The Commonwealth has not shown how prolonged discovery  
22 about the financial innards of Wal-Mart PR, one taxpayer amongst many, is “relevant” or

1 “proportional” to this query. *See* Fed. R. Civ. P. 26(b)(1). Instead, the Commonwealth  
2 ought to focus on proving that the challenged tax does not discriminate against interstate  
3 commerce (or, if it does, that the discrimination is justified), that the tax does not treat  
4 similarly-situated parties differently (or, if it does, that the unequal treatment is justified),  
5 that the tax does not constitute a bill of attainder, and so forth.

6 Next, the Commonwealth asserts that the issue of whether the court has subject-  
7 matter jurisdiction under the Butler Act “is a question of law which requires no inquiry  
8 beyond the four corners of the Complaint itself.” (ECF No. 53 ¶ 1.18.) But, to make that  
9 assertion, the Commonwealth had to ignore controlling Supreme Court precedent. (See  
10 ECF No. 53 ¶ 1.10.) In *Stewart Dry Goods Co. v. Lewis*, 287 U.S. 9 (1932), the Supreme  
11 Court held that a federal-court challenge to a state tax could not be dismissed on the  
12 ground that the state court provides an adequate remedy at law when a tax-refund action  
13 is available, because the complaint alleged that the state treasury lacked sufficient funds  
14 to honor existing refunds. *Id.* at 10-11. Accordingly, the Supreme Court remanded the  
15 case to the trial court for a “determination upon evidence” as to whether the state tax-  
16 refund action “afforded a certain, reasonably prompt and efficacious remedy” and also, in  
17 the event that jurisdiction existed, “for final hearing upon the merits.” *Id.* at 11.

18 Similarly, here, Wal-Mart PR has alleged that the Commonwealth’s precarious  
19 financial situation has caused “concrete and substantial uncertainties regarding Wal-Mart  
20 PR’s ability to ultimately collect the enormous refunds to which it would be entitled, if  
21 Wal-Mart PR were forced to seek refunds [of its] taxes through the Commonwealth’s . . .  
22 administrative and judicial refund processes.” (ECF No. 1 ¶ 65.) The court cannot

1 determine whether those alleged uncertainties exist without presiding over an evidentiary  
2 hearing where Wal-Mart PR will be required to submit proof. *See Colonial Pipeline Co.*  
3 *v. Collins*, 921 F.2d 1237 (11th Cir. 1991) (remanding a constitutional challenge to a  
4 state tax to the District Court to “develop a fuller record” on plaintiff’s allegations that  
5 ongoing problems with the state’s tax-refund action preclude it from providing a “plain,  
6 speedy, and efficient remedy.”).

7 The Commonwealth maintains that Wal-Mart PR has “no factual basis” for stating  
8 that Puerto Rico courts do not provide an adequate remedy.<sup>1</sup> (ECF No. 53 at 14.) On  
9 February 2, 2016, the court will preside over a trial to see whether that assertion is true.  
10 (See ECF No. 42.) At that trial, the court will also hear evidence and arguments on the  
11 merits of Wal-Mart PR’s challenges to the Commonwealth’s Alternative Minimum Tax  
12 for corporations. The Commonwealth is well aware that this is a matter that needs to be  
13 “adjudicated . . . expeditiously.” (ECF No. 37 at 13, line 19 (statement of Mr. González  
14 Castañer)). If the court has jurisdiction and the tax is valid, then the Commonwealth  
15 should be able to collect the tax and plan its budget accordingly, with all the assurance of  
16 a federal-court judgment in its favor. But, if the tax proves to be invalid, then the Puerto

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<sup>1</sup> The Commonwealth asserts that, even if the Commonwealth is unable to pay a tax refund, the local refund process could still provide an adequate remedy for Wal-Mart PR’s claims by granting Wal-Mart PR a tax credit instead. Needless to say, such a “remedy” would hardly be speedy or efficient. (See ECF No. 40 at 16-18.) For example, as the Commonwealth acknowledges, a tax credit could work as a remedy only if Wal-Mart PR “continue[s] to be a Puerto Rico taxpayer for years to come.” (ECF No. 53 at 4.) Moreover, it is suspect whether a tax credit is a constitutionally-acceptable remedy for an illegal tax. See *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 40-41 (1990).

By citing 13 L.P.R.A. § 261, see ECF No. 53 at 9-11, the Commonwealth opens a Pandora’s Box. That statute’s tax-credit system seems to be of no application to income-tax refunds. Although it is true that the statutory exception makes reference to the Income Tax Act of 1954, as we know, that Act has long been repealed and substituted by different versions that regulate income taxation. It thus appears, but we do not now decide, that 13 L.P.R.A. § 261 excludes from its tax-credit system refunds emanating from income taxation in general.

1 Rico taxpayers subject to it should not have to remit those funds to the Commonwealth,  
2 especially if the Commonwealth is unable to repay them.

3 As was noted at the outset, we all share a fundamental duty “to secure the just,  
4 speedy, and inexpensive determination of [this] action . . . .” *See* Fed. R. Civ. P. 1. The  
5 court will not delay the proceedings in this pressing matter for no reason. Accordingly,  
6 the Commonwealth’s motion is **DENIED**. (ECF No. 53.)

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this 8th day of January, 2016.

9 S/José Antonio Fusté  
10 JOSE ANTONIO FUSTE  
11 U. S. DISTRICT JUDGE